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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,784	02/27/2004	Susan H. Matthews Brown	017242-008430US	9453
20350	7590	01/11/2005	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP TWO EMBARCADERO CENTER EIGHTH FLOOR SAN FRANCISCO, CA 94111-3834			TRETEL, MICHAEL	
		ART UNIT	PAPER NUMBER	
		3673		

DATE MAILED: 01/11/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/789,784	MATTHEWS BROWN ET AL.	
Examiner	Art Unit		
Michael Trettel	3673		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 6/14/04.

2a)  This action is FINAL.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

4)  Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-28 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on \_\_\_\_\_ is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 05/24/04.  
4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Misnumbered claims 24 to 27 been renumbered 25 to 28.

### ***Double Patenting***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1 to 6, 9, 10, 12, and 20 to 28 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 to 20 of U.S. Patent No. 6,453,493. Although the conflicting claims are not identical, they are not patentably distinct from each other because the present claims define the cover opening as being formed as a seam with a fastener being attached to the seam. This type of construction is commonly done within

the pillow art, and as such the skilled artisan would have recognized that it would have been obvious to construct the cover opening of the '493 patent claims in this fashion.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.
- (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1 to 4, 7, 9, 10, 18, 19, 21 to 23, 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Emery (US 3,312,987). Emery shows a U-shaped inflatable support pillow 10 that is covered by a slipcover 30. An intermediate cushioning layer 20 can be placed between the slipcover 30 and the pillow 10. The pillow has a pair of opposing arms 14 that are attached by a medial region, with the cover 30 having an equivalent shape to tightly fit the pillow. A closure fastener in the form of a zipper 31 extends along a medial edge of the cover 30 to allow access to the interior of the cover. Note the use of an inflatable bladder 10 covered by a padding member 20 as shown in Figure 1.

Claims 1 to 4, 7, 9, 10, 21 to 23, 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Kaskey (US 2,522,120). Kaskey shows a contoured support pillow comprising a pair of elongated end portions 13 connected by a neck 12 to form a U-shape with a well or notch

10 defined between the end portions 13. A cover or casing can be provided to cover the pillow, with the cover including a zipper 21 that is formed along the back edge of the neck portion of the pillow. The pillow can be formed as either an inflatable bladder as shown in Figure 3 or as a solid filler 20 made from fiber, foam material, or the like.

Claims 1 to 4, 7, 9, 10, 21 to 23, , 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Silver et al. Silver et al shows a U-shaped travel pillow 10 that includes a body portion 20 formed by a casing 40 and filler material 60. The casing has a fastener 54 attached to an opening 52 set across one of the faces of the pillow, so as to allow a user to introduce or remove filler from the cushion.

Claims 1 to 4, 7 to 12, 17, 20 to 24, 26, and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Crowley (US 6,061,854). Crowley shows an adjustable nursing pillow assembly 20 that comprises at least one U-shaped cushion insert layer 26a, 26b, and 26c received within a conforming outer cover assembly 28. The cover assembly 28 includes a handle 30 attached thereto by a pair of buckle receivers 38, 40. The buckle receivers 38, 40 are attached to a pair of straps 34, 36 that extend from the ends of the arms of the pillow cover, the straps can inherently be pulled together to tie the arms of the pillow together if so desired. A zipper 42 extends across a medial face of the cover 28 to provide an access opening to the interior of the cover in order to insert the layers 26a-26c as needed. Pocket as described in column 8, lines 53 to 60 can be placed upon the exterior surfaces of the cover 28 in order to hold various items in

conjunction with the pillow assembly 20. A blanket 120 can be attached to the pillow assembly along one medial face by a series of snap fasteners shown in Figures 4 and 5.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 13 and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaskey et al in view of Yager et al. Yager et al teaches that a pillow cover can have a three dimensional appliqu   44 in the form of a character attached to the exterior surface of the pillow cover. The appliqu   serves as a decorative feature for a child using the pillow. It would have been obvious to one of ordinary skill in the art to have provided the Kaskey pillow cover with a decorative appliqu   as taught by Yager, in order to create a decorative feature that would interest a child using the pillow.

Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kaskey et al in view of Matthews (US 5,546,620). Matthews teaches that a U-shaped body support cushion can includes or use toys 52, 54, 56 attached to the exterior of the pillow by straps such that the toys are within the reach of an infant using the pillow. It would have been obvious to the skilled artisan to have provided strap attached toys to the Kaskey pillow as taught by Matthews, for the purpose of providing a source of amusement for an infant using the pillow.

Claims 1 to 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morgillo (US 6,499,165) in view of Kaskey et al. Morgillo shows a U-shaped support cushion 4 that has an infant restraining harness 20 attached to the front surface of the pillow such that it is draped across the well of the pillow. The harness is used to restrain an infant within the well of the pillow such that the side arms 8, 10 embrace the infant with the pillow back portion 6 then acting as a backrest. Note the teaching in column 5, lines 43 to 50 wherein it is set forth that the harness could be attached to a pillowcase used to cover a U-shaped support cushion, rather than being attached directly to the pillow itself. As noted above, Kaskey et al teaches that a U-shaped support cushion can have a cover formed by upper and lower fabric pieces 16, 17 stitched to a peripheral band 19, with a closure 21 being formed across a medial face of the band to allow access to the interior of the casing for removing the pillow. It would have been obvious to one of ordinary skill in the art to have provided the pillowcase embodiment alluded to by Morgillo with a closure 21 as taught by Kaskey et al, to allow a user to remove the U-shaped pillow from the interior of the pillowcase.

### *Conclusion*

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Leavitt shows a pillowcase with a medial closure 8 formed across a face 10 of the pillow.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Trettel whose telephone number is 703-308-0416. The examiner can normally be reached on Monday, Tuesday, Thursday, or Friday from 7.30 am to 5.00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



Michael Trettel  
Primary Examiner  
Art Unit 3673